

14. Prevented Planting

Your prevented planting coverage will be 40 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[62 FR 61903, Nov. 20, 1997, as amended at 62 FR 65173, Dec. 10, 1997]

§ 457.138 Grape crop insurance provisions.

The grape crop insurance provisions for the 2010 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE
Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Grape Crop Provisions

1. Definitions

Graft. To unite a shoot or bud (scion) with a rootstock or an existing vine in accordance with recommended practices to form a living union.

Harvest. Removing the mature grapes from the vines either by hand or machine.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Set out. Physically planting the grape plants in the vineyard.

Ton. Two thousand (2,000) pounds avoirdupois.

Type. A category of grapes (one or more varieties) identified as a type in the Special Provisions.

Variety. A kind of grape that is distinguished from any other by unique characteristics such as, but not limited to, size, color, skin thickness, acidity, flavors and aromas. In Arizona and California each variety is identified as a separate type in the Special Provisions except for type 095 (other varieties). Type 095 is used to designate varieties not listed as a separate type.

2. Unit Division

(a) In Arizona and California only:

(1) A basic unit as defined in section 1 of the Basic Provisions will be divided into additional basic units by each variety that you insure; and

(2) Provisions in the Basic Provisions that provide for optional units by section, section equivalent, or FSA farm serial number and

by irrigated and non-irrigated practices are not applicable. Unless otherwise allowed by written agreement, optional units may only be established if each optional unit is located on non-contiguous land or grown and insured under an organic farming practice.

(b) In all states except Arizona and California, in addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated acreage and for acreage grown and insured under an organic farming practice as provided in the unit division provisions contained in the Basic Provisions, a separate optional unit may be established if each optional unit:

(1) Is located on non-contiguous land; or

(2) Consists of a separate type when separate types are specified in the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions:

(a) In Arizona and California, you may select only one coverage level and price election for each grape variety you elect to insure in the county.

(b) In all states except Arizona and California, you may select only one coverage level and price election for each grape type in the county as specified in the Special Provisions. The coverage level you choose for each grape type is not required to have the same percentage relationship. The price election you choose for each type is not required to have the same percentage relationship to the maximum price election offered by us for each type. For example, if you choose 75 percent coverage level and 100 percent of the maximum price election for one type, you may choose 65 percent coverage level and 75 percent of the maximum price election for another type. If you elect the Catastrophic Risk Protection (CAT) level of insurance for any grape type, the CAT level of coverage will be applicable to all insured grape acreage in the county.

(c) In all states except Arizona and California, if you acquire a share in any grape acreage after you submit your application, such acreage is insurable under the terms of the policy and you did not include the grape type on your application, we will assign the following:

(1) A coverage level equal to the lowest coverage level you selected for any other grape type; and

(2) A price election percentage equal to the type with the lowest coverage level you selected, if you elected additional coverage; or 55 percent of the maximum price election, if you elected CAT.

(d) In addition to the definition of "price election" contained in section 1 of the Basic Provisions, a price election based on the

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price contained in your grape contract is allowed if provided by the Special Provisions. In the event any contract requires the use of a cultural practice that will reduce the amount of production from any insured acreage, your approved yield will be adjusted in accordance with section 3(f) and (g) to reflect the reduced production potential.

(e) In Arizona and California only, if the Special Provisions do not provide a price election for a specific variety you wish to insure, you may apply for a written agreement to establish a price election. Your application for the written agreement must include:

- (1) The number of tons sold for at least the two most recent crop years; and
- (2) The price received for all production of the grape variety in the years for which production records are provided.

(f) You must report by the production reporting date designated in section 3 of the Basic Provisions, by type or variety, if applicable:

(1) Any damage, removal of bearing vines, change in practices or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing vines on insurable and uninsurable acreage;

(3) The age of the vines and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and any time the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and the grape type or variety, if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

(g) We will reduce the yield used to establish your production guarantee, based on our estimate of the effect on yield potential of any of the items listed in section 3(f)(1) through (4). If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee at any time we become aware of the circumstance.

(h) Your request to increase the coverage level or price election percentage will not be accepted if a cause of loss that could or would reduce the yield of the insured crop is evident when your request is made.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 preceding the cancellation date for Arizona and California and August 31 preceding the cancellation date for all other states.

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5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31 in Arizona and California, and November 20 for all other states.

6. Report of Acreage

In addition to the requirements of section 6 of the Basic Provisions, you must report your acreage:

(a) In Arizona and California, by each grape variety you insure; or

(b) In all other states, by each grape type.

7. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be any insurable variety that you elect to insure in Arizona and California, or in all other states all insurable types, in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are grown for wine, juice, raisins, or canning (if such grapes are put to another use (*i.e.* table grapes), the production to count will be in accordance with section 12(c)(2(ii));

(c) That are grown in a vineyard that, if inspected, is considered acceptable by us;

(d) That, after being set out or grafted, have reached the number of growing seasons designated by the Special Provisions; and

(e) That have produced an average of at least two tons of grapes per acre (or as otherwise provided in the Special Provisions) in at least one of the three crop years immediately preceding the insured crop year, unless we inspect and allow insurance on acreage that has not produced this amount.

8. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance attaching to a crop planted with another crop, grapes interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

9. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) For the year of application, coverage begins on February 1 in Arizona and California, and November 21 in all other states. Notwithstanding the previous sentence, if your application is received by us after January 12 but prior to February 1 in Arizona or California, or after November 1 but prior to November 21 in all other states, insurance will attach on the 20th day after your properly completed application is received in our local office, unless we inspect the acreage during the 20-day period and determine that

it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the vineyard.

(2) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) If in accordance with the terms of the policy, your grape policy is cancelled or terminated for any crop year after insurance attached for that crop year, but on or before the cancellation and termination dates, whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

(4) The calendar date for the end of the insurance period for each crop year is as follows, unless otherwise specified in the Special Provisions:

- (i) October 10 in Mississippi and Texas;
- (ii) November 10 in Arizona, California, Idaho, Oregon and Washington; and
- (iii) November 20 in all other states.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(1) If you acquire an insurable share in any insurable acreage after coverage begins, but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period. Acreage acquired after the acreage reporting date will not be insured.

(2) If you relinquish your insurable share on any insurable acreage of grapes on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

- (1) Adverse weather conditions;
- (2) Fire, unless weeds and other forms of undergrowth have not been controlled or

pruning debris has not been removed from the vineyard;

(3) Insects, except as excluded in 10(b)(1), but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§457.8), we will not insure against damage or loss of production due to:

(1) Phylloxera, regardless of cause; or

(2) Inability to market the grapes for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

11. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(b) If the crop has been damaged during the growing season and you previously gave notice in accordance with section 14 of the Basic Provisions (§457.8), you must also provide notice at least 15 days prior to the beginning of harvest if you intend to claim an indemnity as a result of the damage previously reported. You must not destroy the damaged crop that is marketed in normal commercial channels, until after we have given you written consent to do so. If you fail to meet the requirements of this section, all such production will be considered undamaged and included as production to count.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee;

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(2) Multiplying each result in section 12(b)(1) by the respective price election you selected for each type or variety;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production to count of each type or variety, if applicable, (see section 12 (c) through (e)) by the respective price election you selected;

(5) Totaling the results in section 12(b)(4);

(6) Subtracting the result in section 12(b)(5) from the result in section 12(b)(3); and

(7) Multiplying the result in section 12(b)(6) by your share.

(c) The total production to count (in tons) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned or destroyed by you without our consent;

(B) That is damaged solely by uninsured causes; or

(C) For which you fail to provide production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies in accordance with subsection 12 (e)); and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage:

(i) Grape production that is harvested and dried for raisins will be converted to a fresh weight basis by multiplying the number of tons of raisin production by 4.5.

(ii) Grapes grown for wine, juice, raisins or canning and put to another use, will be counted as production to count on a tonnage basis. No quality adjustment other than that specifically provided for in your policy is available.

(d) If any grapes are harvested before normal maturity or for a special use (such as Champagne or Botrytis-affected grapes), the production of such grapes will be increased by the factor obtained by dividing the price per ton received for such grapes by the price

per ton for fully matured grapes of the type for which the claim is being made.

(e) Mature marketable grape production may be adjusted for quality deficiencies as follows:

(1) Production will be eligible for quality adjustment if, due to insurable causes, it has a value of less than 75 percent of the average market price of undamaged grapes of the same or similar variety. The value per ton of the qualifying damaged production and the average market price of undamaged grapes will be determined on the earlier of the date the damaged production is sold or the date of final inspection for the unit. The average market price of undamaged production will be calculated by averaging the prices being paid by usual marketing outlets for the area during the week in which the damaged grapes were valued.

(2) Grape production that is eligible for quality adjustment, as specified in subsection 12(e)(1) will be reduced by:

(i) Dividing the value per ton of the damaged grapes by the value per ton for undamaged grapes (the value of undamaged grapes will be the lesser of the average market price or the maximum price election for such grapes); and

(ii) Multiplying this result (not to exceed 1.000) by the number of tons of the eligible damaged grapes.

13. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 33741, June 23, 1997, as amended at 62 FR 65173, Dec. 10, 1997; 63 FR 31338, June 9, 1998; 64 FR 24932, May 10, 1999; 74 FR 32055, July 7, 2009]

§ 457.139 Fresh market tomato (dollar plan) crop insurance provisions.

The fresh market tomato (dollar plan) crop insurance provisions for the 1999 and succeeding crop years are as follows:

FCIC Policies

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and Reinsured Policies

Fresh market tomato (dollar plan) crop provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1)